

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)
)
Distribution of)
Cable Royalty Funds)
)
In the Matter of)
)
Distribution of)
Satellite Royalty Funds)

CONSOLIDATED DOCKET NO.
14-CRB-0010-CD/SD
(2010-2013)

**Reply in Support of
Motion for Substitution of Parties
by Worldwide Subsidy Group LLC
or, Alternatively, Ryan Galaz**

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ARGUMENT

A. The SDC engage in a series of rehashed and rejected arguments, failing to address the issue presented by the Judges.

Review of the SDC's opposition brief reveals a byzantine series of straw man arguments tied to other straw man arguments, all of which are irrelevant to the singular issue presented by the Judges. The SDC attempt to argue their way out of the undeniable fact that all copyright interests prosecuted by Multigroup Claimants in this proceeding were pursuant to agreements between the underlying copyright holders and Worldwide Subsidy Group LLC ("WSG") that the Judges *already* determined provide WSG authority to participate in this proceeding; that WSG was determined by the Judges to have validly assigned its rights under such agreements to Multigroup Claimants; and that WSG has now had its rights under such agreements assigned back to it. All transfers, of any interests, are now comprehensively memorialized in writings presented to the Judges, without exception.

Other than the misattribution of several arguments to WSG that have never been made by WSG (see *infra*), the SDC raise the identical arguments raised in their *Opposition to WSG's Motion for Substitution of Parties* (July 2, 2020) and rejected in the Judges' October 5, 2020 Order. While WSG's instinctual reaction would be to simply re-assert the arguments and legal authority set forth in WSG's reply brief thereto (filed July 10, 2020), WSG takes note of the Judges' comment in its order that "most of the arguments [presented by the parties] are either incorrect or beside the point", and that "the question before the Judges is not whether the contract rights *could have been* assigned to WSG, but whether they *were* assigned." Order at 3 (emphasis in original).

Quite simply, WSG (and Ryan Galaz) have addressed this issue, and the SDC has not. WSG's motion presents a memorialized transfer of rights from Ryan Galaz to WSG, supplementing the unchallenged declaration under penalty of perjury of Ryan Galaz already submitted to the Judges and attesting to the transfer of rights.¹ That is, WSG has memorialized that the interests in issue *were* assigned. With such documents, WSG has comprehensively closed the loop of all relevant rights transfers, and documented the same: Underlying copyright owners to WSG; WSG to Multigroup Claimants; Multigroup Claimants to Ryan Galaz; Ryan Galaz to WSG. Alternatively, if for *any* reason the Judges reject such documentation, documentation of the chain-of-title transfers to Ryan Galaz already exist, and Ryan Galaz can be substituted as a party in this action. It makes no matter, and will have zero consequence on any parties' contractual obligations.

By contrast, the SDC offer literally no challenge to either the (i) Multigroup Claimants-Ryan Galaz transfer, or (ii) the Ryan Galaz-WSG transfer. Not even a word mentioned. Rather, the SDC focus exclusively on challenging the agreements and transfers that preceded the foregoing transfers, i.e., the agreements between the underlying copyright owners and WSG, and the subsequent transfer from WSG to Multigroup Claimants, rehashing arguments that were already rejected in this proceeding.

As already noted in WSG's *Reply in Support of Motion for Substitution of Parties* (July 10, 2020), both the SDC and MPAA challenged in this proceeding the agreements between

¹ See Motion at 11-12:

“Notwithstanding, and to quash any suggestion that Ryan Galaz (in his personal capacity) did not validly transfer to WSG all interests previously held by Multigroup Claimants (which interests were themselves acquired from WSG), Ryan Galaz has now additionally executed a document formally acknowledging his transfer of such interests to WSG. See Exhibit A.”

underlying copyright owners and WSG, and the WSG's subsequent transfer from WSG to Multigroup Claimants,² and such challenges were expressly rejected by the Judges.³ The law of the case principle precludes revisiting those challenges,⁴ and the Judges' Order of October 5, 2020, makes clear that such was not the issue to be addressed. It is therefore befuddling that the SDC would dwell on such already-rejected challenges. Such challenges have nothing to do with whether WSG (or alternatively, Ryan Galaz) can now be substituted in the shoes of Multigroup Claimants.

B. The SDC present several spurious challenges to the agreements between underlying copyright owners and WSG, based predominately on misrepresentations of WSG's position.

While it serves no purpose to re-assert all of the arguments, past and present, in response to the SDC's challenge to the agreements between underlying copyright owners and WSG, WSG will briefly address the arguments raised in the SDC opposition brief.

² See, e.g., SDC's *Motion to Disqualify Multigroup Claimants and to Disallow Certain Claimants and Programs* at 5 (Oct. 11, 2016) ("IPG is an Agent, Not a Copyright Owner, and in Order for MGC to Petition to Represent Claimants in these Proceedings, MGC Was Required to Obtain Consent Directly from the Copyright Owners Before Filing the Petitions to Participate"); see also, MPAA's *Motion for Disallowance of Claims Made by Multigroup Claimants* at 19 (Oct. 11, 2016) ("Claimants Who Did Not Authorize Or Consent To MC Or SLP Acting As Their Agent In These Proceedings Must Be Dismissed").

³ *Ruling and Order Regarding Objections to Cable and Satellite Claims* at 13-16 (Oct. 23, 2017) ("The Judges find that MPAA's evidence and arguments do not support a general rule requiring consent from each of [WSG's] claimants in order to represent them in these proceedings.").

⁴ Specifically, the law of the case doctrine generally prohibits a court from considering an issue that has already been decided by that same court or a higher court in the same case. *Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012). Similarly, the principles of res judicata and collateral estoppel prevent the re-litigation of issues already litigated. See *U.S. v. Wells*, 347 F.3d 280, 285 (8th Cir. 2003).

In their October 5, 2020 order, the Judges denied without prejudice a motion to substitute WSG for Multigroup Claimants. Therein, the Judges granted WSG leave to

“refile its motion for substitution of parties, supported by documentary evidence and/or compelling legal argument (with citation to legal authority) that establishes that WSG has legal authority to represent the [Multigroup Claimants’] claimants, whether by virtue of a legally effective conveyance of *contractual rights* or any other means.”

Order at 3-4 (emphasis added).

Despite the foregoing, the SDC contend that what the judges requested from WSG -- a memorialized transfer of Multigroup Claimants’ rights to WSG, or legal authority demonstrating that memorialization is not necessary -- is inadequate. Rather, the SDC assert that the Judges are *statutorily precluded* from accepting the substitution of Multigroup Claimants by either WSG or, alternatively, Ryan Galaz, because the nature of the *already sanctioned* contracts between underlying copyright owners and WSG neither establish an agency relationship, nor grant a copyright interest. According to the SDC, 17 U.S.C. § 111(d)(4)(B) requires that the underlying transfer either be (i) an agency relationship, or (ii) a grant of copyright interest in order for the Judges to allow a party to participate in royalty distribution proceedings.⁵ SDC opp. at 2-3. According to the SDC, the conveyance by underlying copyright owners to WSG of the right to “apply for and collect” royalties distributed in these proceedings falls within a nether region somewhere between an agency relationship and a copyright interest, so must be deemed irrelevant *ab initio* and unenforceable in these proceedings.

⁵ While such issue need not be addressed here, the language of such provision suggests that a transfer of the right to “apply for and collect” retransmission royalties must be one or the either variety identified in the statute, as no cognizable reason would exist to deny a party the right to participate in royalty distribution proceedings if they had been contractually granted the right to “apply for and collect” such retransmission royalties.

Quite simply, the SDC attempt to dredge up arguments that have been asserted and rejected on multiple occasions. Notably, the agreements that are the basis for Multigroup Claimants' participation in this proceeding are the *identical* agreements that were the basis of WSG's participation in each of several proceedings, including the following:

- 1998-1999 cable
- 2000-2003 cable
- 2004-2009 cable
- 1999-2009 satellite

In each instance, the proceedings have concluded and appeals exhausted. Whether according to the "law of the case" principle in this case, or collateral estoppel derived from the earlier proceedings, the SDC is now precluded from challenging the validity of the identical agreements relied on by WSG in this proceeding. See *supra*, fn. 4.

Moreover, the Judges need not look any further than the initiating agreements between the underlying copyright holders and WSG. Therein, in each instance WSG was "grant[ed] and assign[ed] the right *to apply for and collect* any and all monies distributed by audiovisual copyright collection societies throughout the world." See, e.g., **Exhibit 1**, at para. 1. For the Judges to accept the SDC's argument, the Judges would be required to disregard the obvious intent of scores of agreements entered into between underlying copyright owners and WSG that have been vociferously challenged unsuccessfully by the SDC (and MPAA), reversing two decades of precedent wherein such agreements were accepted by the CRB and the CARP.

As a confusing premise for its already-irrelevant argument, the SDC attribute WSG with several positions never taken by WSG in any prior proceeding, much less addressed in WSG's motion. As but one example of its misattribution, the SDC assert that:

"WSG and Ryan Galaz admit that they are not copyright owners and that they have no written instrument reflecting any transfer of copyright ownership".

SDC Opp. at 3. WSG took no such position. Moreover, the SDC's basis for such statement is pulled from a non-sequitur, wherein WSG cited to a ruling of the Judges with which WSG has steadfastly disagreed for over a decade. Contrary to the SDC's statement, WSG has *always* contended that it was assigned a sliver of copyright interests from underlying copyright owners, that such copyright interests were conveyed from WSG to Multigroup Claimants (and now from Multigroup Claimants to Ryan Galaz and WSG). WSG has never deviated from such position.⁶

As the SDC are aware, WSG cited such excerpt to make the point that the Judges' prior characterization of WSG's agreements (as *not* being conveyances of copyright interests) means that a transfer evidenced by a writing is *unnecessary*, but that WSG has *nonetheless* produced writings evidencing the chain-of-title of the interests being prosecuted in this proceeding. That is, WSG made the compelling point that irrespective of how the Judges characterize the transfers to and from WSG – i.e., a transfer of copyright interests, or agency rights, or contractual rights -- WSG has nonetheless complied with even the most arduous of possible requirements. See fn. 1, *supra*.

The SDC rely on yet another non-sequitur, when it accused that “Ryan Galaz’s purported predecessors had themselves embraced their alleged status as agents, when it suits their purposes to do so”. SDC Opp. at 5. As the aggregate of their support, however, the SDC cite to language drafted by the Judges, not language drafted by Ryan Galaz’s predecessors. Even then, such citation was to the Judges’ reference to an argument made by WSG as to a *hypothetical* situation.

But again, the SDC seek to confuse by attributing false positions to WSG.

⁶ In fact, the SDC's opposition brief (and WSG's moving brief) even cites to a ruling by the Judges wherein WSG's position that it is an assignee of a copyright interest is articulated. SDC

As yet another misrepresentation of WSG’s position, the SDC submit an argument headed “WSG Cannot Challenge the Validity of Its Assignment to Alfred Galaz at This Late Date”. WSG has *never* asserted that the WSG-Multigroup Claimants transfer was “invalid”, and to assert such position distorts everything set forth in WSG’s briefing. Relying on yet another non-sequitur as the basis of its argument, the SDC assert:

“WSG has argued that it need not show that it has received a valid assignment either directly or indirectly from Alfred Galaz dba MGC, because WSG was the original holder of the agency authority.”

SDC Opp. at 8.

As an initial matter, the cited basis has zero relevance to the argument made by the SDC. Second, the SDC falsely attribute this position to WSG, purposely replacing the word “written” with “valid”. As is clear, WSG’s moving brief contends that a *written* transfer of interests from Ryan Galaz to WSG is unnecessary, because an *oral* transfer is equally as enforceable, but that the issue is nonetheless moot because WSG *has* obtained written assignments at each step of transfer. None of WSG’s argument, as correctly expressed herein, had to do with the fact that WSG was the original transferee from underlying copyright owners, except to the extent that the SDC continues to falsely maintain (in the face of the Judges’ prior determinations) that the underlying copyright owners need to *again* execute documentation authorizing WSG to “apply for and collect” retransmission royalties allocable to their works.

As expressed throughout WSG’s brief, all transfers have been memorialized: Underlying copyright holders to WSG (varied dates); WSG to Multigroup Claimants (Jan. 20, 2015); Multigroup Claimants to Ryan Galaz (Jan. 1, 2018); Ryan Galaz to WSG (eff. Jan. 1, 2018).

opp. at 4, citing *Ruling and Order Regarding Claims and Separate Opinion*, No. 2008-1 CRB CD 98-99 (Phase II), at 12. See also, WSG moving brief at fn. 10.

Consequently, the point remains that, per the previously presented legal authority, and the rulings of the Judges in this and prior proceedings, no written transfers were required, but WSG has nonetheless presented written transfers to the Judges.

C. Even presuming that “agency” law applies, the SDC misapply California law.

Again, while the Judges clarified in their order that briefing on such issue is not being solicited, the SDC continues to fixate on the agreements between underlying copyright owners and WSG, and how they should be characterized. The SDC state (without any attribution of authority) that “[WSG] must show that the agency authority - not merely the contract right - has been validly assigned from Alfred Galaz dba Multigroup Claimants.” SDC Opp. at 6. Whatever the meaning of that statement, the SDC suggest, as they did in their *Opposition to WSG’s Motion for Substitution of Parties* (July 2, 2020), that “WSG cannot establish its authority without proof that the represented claimants have consented first to the transfer from Alfred Galaz to Ryan Galaz and then from Ryan Galaz to WSG.” This position is made in derogation of the fact that the Judges have already validated the agreements between underlying copyright owners and WSG, and confirmed that WSG was not required to obtain the consent of the underlying copyright owners before transferring its interests to Multigroup Claimants. See fn. 2, fn. 3, *supra*.

In support of this unsolicited argument, the SDC once again cite to California Civil Code 2349 and the 1899 case *Dingley v. McDonald*, 57 P. 74 (1899), but fail to acknowledge WSG’s briefing on such matter in WSG’s *Reply in Support of Motion for Substitution of Parties* (July 10, 2020). SDC Opp. at 7. Even presuming that “agency” law applies here, which it does not, the SDC gloss over one of the exceptions under which agency rights can be delegated. Specifically, subsection (3) states that an agent may delegate his powers to another “when it is

the usage of the place to delegate such powers”. While oddly phrased, the meaning of this provision is elucidated within the case cited by the SDC, *Dingley v. McDonald*, 57 P. 574 (Cal. 1899).

In *Dingley*, the exception makes clear that the provision applies to the expected practice of delegating powers that were the subject of the agency: “No usage was shown for agents to assign claims for collection, and we cannot assume that any such usage exists in San Francisco, where the suit was brought....” *Dingley*, at 576.

As has been oft-noted, the agreements between the copyright owners and WSG cover worldwide royalty collection, and it has been WSG’s open practice to engage third parties to collect royalties outside the United States. The Judges have already acknowledged this practice by WSG in their rulings. See, e.g., *Ruling and Order Regarding Objections to Cable and Satellite Claims*, at 14 (Oct. 23, 2017). In fact, WSG has even engaged third parties for collection in the United States for particular Phase I categories where no methodological disagreements exist (PBS for non-commercial broadcasts category; Canadian Claimants Group for Canadian Claimants program category), and in twenty-two years, *no WSG client has ever objected to WSG’s practice* of engaging third parties for collection because it is the norm for the industry and *expected*. That is, the prerequisites set forth by California Civil Code § 2349(3) are satisfied.

Apparently retreating from its previously articulated position, the SDC no longer assert that “the assignment of an agency agreement without the express consent of the claimants is unprecedented in copyright royalty proceedings.” As Multigroup Claimants previously noted, not only does the SDC statement run contrary to the prior rulings relating to Multigroup Claimants in this proceeding, but the SDC have been party to multiple proceedings involving the MPAA, wherein the MPAA has openly acknowledged (even within its Written Direct Statements) that

the vast majority of its programs are owned by parties that are not in privity with the MPAA, and with whom the MPAA has *never even communicated*. See *Ruling and Order Regarding Objections to Cable and Satellite Claims*, at 40, et seq. (Oct. 23, 2017). For the SDC to claim that “it is not ‘the usage of the place’ for an agent to delegate powers to participate in copyright royalty proceedings without knowledge and consent of the claimant”, misrepresents what WSG, the Judges, and every other participant in these proceedings knows to be the case. *Id.*

Consequently, even if Multigroup were subject to an erroneous application of California Civil Code § 2349, an exception articulated therein would relieve Multigroup Claimants of any obligation to seek approval of a subsequent transfer of Multigroup Claimants’ rights.

CONCLUSION

The SDC persist in asserting previously rejected arguments, fail to address the singular issue presented by the Judges, fail to make any challenge to either the (i) Multigroup Claimants-Ryan Galaz transfer, or (ii) the Ryan Galaz-WSG transfer, and again make literally no reference to the provision pursuant to which WSG has sought to substitute itself in this proceeding, 37 C.F.R. § 360.4(c).

For the reasons set forth herein, Worldwide Subsidy Group LLC hereby requests that the Judges formally substitute Worldwide Subsidy Group LLC dba Multigroup Claimants in the stead of Multigroup Claimants, a sole proprietorship of Alfred Galaz, in this proceeding. Alternatively, in the event of the denial thereof, Worldwide Subsidy Group LLC and Ryan Galaz move that Ryan Galaz be substituted in lieu of Multigroup Claimants.

Respectfully submitted,

November 3, 2020

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CERTIFICATE OF SERVICE

I certify that on November 3, 2020, I caused a copy of the foregoing pleading to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

_____/s/_____
Brian D. Boydston, Esq.

Proof of Delivery

I hereby certify that on Tuesday, November 03, 2020, I provided a true and correct copy of the Reply in Support of Motion for Substitution of Parties by Worldwide Subsidy Group LLC or, Alternatively, Ryan Galaz to the following:

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